

Remarks/Arguments:

Double Patenting Rejections

Applicants note the provisional double patenting rejection based on applicants' U.S. Patent Application No. 10/401,997. Applicants respectfully submit that such double patenting rejection will be addressed upon allowance and issuance of one or more of the applications.

Claim Rejections Under 35 U.S.C. § 112

Claims 1-8, 10, 15-17 and 21 stand rejected under 35 U.S.C. § 112, first paragraph. The Office Action indicates the claimed relationship of the eccentric opening is not supported by the specification. Applicants respectfully submit that the objected to language has been deleted from claim 1, and therefore, this rejection is moot.

Applicants further respectfully submit that the eccentric relationship is explained at least on page 12, lines 16-20 of the original specification. It is explained therein that "[t]he opening 40 of the spherical portion 38 is eccentric to the aperture 14' located on the base plate 12'." Since the opening 40 of the pocket 32 is eccentric to the aperture, the eccentric opening of the retaining mechanism is rotatable between locked and unlocked positions.

Withdrawal of this rejection is respectfully requested.

Claim Rejections Under 35 U.S.C. §§ 102 and 103

Claims 1-8, 10, 15-17 and 61 stand rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,138,550 (Michelson). Claim 61 stands rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,607,426 (Ralph et al.). Claim 21 stands rejected under 35 U.S.C. §103(a) as unpatentable over Michelson in view of U.S. Patent No. 6,602,255 (Campbell et al.). Applicants respectfully traverse these rejections.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. §2131 *citing Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

"To establish a *prima facie* case of obviousness, ... the prior art reference (or references when combined) must teach or suggest all the claim limitations." M.P.E.P. §2143.

Additionally, as set forth by the Supreme Court in KSR Int'l Co. v. Teleflex, Inc., No. 04-1350 (U.S. Apr. 30, 2007), it is necessary to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed.

Independent claim 1 recites a bone plate assembly comprising: "a base plate including at least one aperture defining a through opening extending through the base plate; and a screw retaining mechanism mounted and rotatable within said aperture between locked and unlocked positions relative to said through opening for preventing the bone screw from backing out from said base plate, wherein said screw retaining mechanism includes a center axis and an internal opening eccentric to said center axis and having a ring at least substantially thereabout, and wherein said screw retaining mechanism is rotatable within said aperture about said center axis between said locked and unlocked positions, wherein said internal opening of said screw retaining mechanism is eccentric with said through opening of said base plate when in said locked position and said internal opening of said screw retaining mechanism is concentric with said through opening of said base plate when in said unlocked position."

Michelson does not teach each limitation each and every limitation of the claimed invention. The Office Action cites to element 20 (Figs. 10 and 11), element 508 (Fig. 64) or element 522 (Fig. 66) as corresponding to the claimed retaining mechanism, with cutouts 22, 510 and 524, respectively, corresponding to the claimed eccentric openings. As shown in Figs. 10, 11, 64 and 66, the cutouts 22, 510 and 524 of Michelson are not internal openings having a ring at least substantially thereabout. To the contrary, they are external cutouts that extend less than 180°. As such, even in the locked position, these elements 20, 508 and 522 overly only a portion of the screw head, leaving room for the screw to become dislodged.

The cited references, alone or in any reasonable combination, fail to teach each and every limitation of the claimed invention. It is respectfully submitted that independent claim 1 is in condition for allowance. Claims 2-8, 10, 15-17 and 21 each depend from claim 1 and are therefore allowable for at least the reasons set forth above.

Claims 13 and 14 are withdrawn from consideration, however, each of these claims depends from generic claim 1. Applicants respectfully request reconsideration and allowance of claims 13 and 14 upon allowance of generic claim 1.

Independent claim 61 recites a bone plate assembly comprising "a base plate including at least one hole extending therethrough; insert means operatively engaged within said at

least one hole for accommodating the bone screw and a screw retaining mechanism having an internal, eccentric opening, the screw retaining mechanism mounted and rotatable within said insert means between locked and unlocked positions relative to said insert means for preventing the bone screw from backing out from said base plate."

With respect to Ralph et al., the cap portion 142 is now cited as an insert means, but the Office Action does not identify any screw retaining means, indicating that such is not positively claimed. Applicants respectfully disagree. a screw retaining means that is rotatable between locked (when inserted) and unlocked positions (when rotated out). This interpretation of Ralph et al. does not include any insert means. Furthermore, even if the socket portion 132 was reasonably interpreted as an insert means, the cap portion 142 is not rotatable within the socket portion 132 between locked and unlocked positions. The Office Action acknowledges that the cap portion 142 must be rotated out to achieve an unlocked position.

The Advisory Action indicates that "there is no requirement in claim 61 to have both an insert and a screw retaining [means]." Applicants respectfully disagree. Claim 61 specifically recites "the screw retaining mechanism mounted and rotatable within said insert means. . . ." Claim 61 clearly recites both an insert means and a screw retaining mechanism, the combination of which is not taught or suggested by either Michelson or Ralph et al.

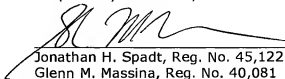
Furthermore, neither Michelson or Ralph et al. teaches or suggests a screw retaining mechanism having an internal, eccentric opening.

The cited references, alone or in any reasonable combination, fail to teach each and every limitation of the claimed invention. It is respectfully submitted that independent claim 61 is in condition for allowance.

It is respectfully submitted that each of the pending claims is in condition for allowance. Early reconsideration and allowance of each of the pending claims are respectfully requested.

If the Examiner believes an interview, either personal or telephonic, will advance the prosecution of this matter, the Examiner is invited to contact the undersigned to arrange the same.

Respectfully submitted,



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JHS/GMM/

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